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REPORT OF THE EXPERT MEETING ON ENERGY SERVICES IN INTERNATIONAL TRADE: DEVELOPMENT IMPLICATIONS

Held at the Palais des Nations, Geneva
23 to 25 July 2001

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Chapter I

ENERGY SERVICES IN INTERNATIONAL TRADE: DEVELOPMENT IMPLICATIONS

Outcome of the Expert Meeting

1. The Expert Meeting on Energy Services in International Trade: Development Implications was held in Geneva from 23 to 25 July 2001. In accordance with the Trade and Development Board's decision taken at its twenty-fourth executive session, the outcome of the Meeting will be circulated by the secretariat to the member States with a request for policy comments. It will subsequently be transmitted to the sixth session of the Commission on Trade in Goods and Services, and Commodities, which will make recommendations on actions to be taken by member States and UNCTAD.

2. The paragraphs below set out experts' suggestions for actions, which could be considered under the headings of (a) policy instruments and strategies, (b) international trade negotiations, (c) analytical work, and (d) follow-up actions. Not all the views expressed were necessarily shared by all the experts, and they are recorded without prejudice to any official positions that may be taken by Governments hereafter.

3. The experts noted the crucial role that energy plays with regard to sustainable development and the very limited access that important segments of people in developing countries have to commercial energy. They considered that the lack of access to modern and sustainable energy is a major cause of environmental and health hazards in vast areas of the developing world and a major impediment to quality of life, while recognizing both the fundamental role of energy as the largest component of gross domestic product in several countries and the very rapid changes taking place in that sector. Moreover, they recognized that these changes fundamentally underlie economic competitiveness, and that building domestic capacities is fundamental to the next stage of exporting value-added energy services, especially for developing countries.

A. Policy instruments and strategies

4. The experts made, *inter alia*, the following suggestions for consideration by Governments:

5. Action is needed to promote wider and, whenever possible, more efficient and affordable access to energy for people and industry, especially in many developing countries. Among other means, this can be achieved through regulatory reform. Investment in the energy sector is a precondition for achieving the goal of making energy available to the poor, and thus the necessary environment to attract domestic and foreign investors should be established. Multilateral, regional and bilateral financial resources should be made available to that end whenever possible. The energy services sector should play an important role in countries' overall economic growth.

6. Measures are needed to increase the competitiveness of suppliers of energy services, particularly in developing countries, and to foster the development of the networks of small and medium-sized enterprises (SMEs) so that those suppliers can increase their share in the energy services market, and provide a source of innovation. Both the regulatory regime and the physical infrastructure may need to be developed and/or strengthened.

7. Strategic alliances between local and foreign firms and between large companies and SMEs should be encouraged in order to enable the identification of market opportunities. The participation of local knowledge and talent should serve to build trust and long-standing business relationships. Large companies' purchasing practices can provide a stimulus for SMEs.

8. Progressive liberalization of market access conditions for energy services should be pursued, taking into account differences among countries in their level of development, regulatory frameworks and market realities. The process of liberalization should be carried out under the appropriate regulatory framework with a view to ensuring the achievement of national policy objectives, including public services obligations, and the establishment of fair competition conditions. Liberalization should not necessarily be equivalent to deregulation. It should entail re-regulation in order to ensure the attainment of the above-mentioned goals.

9. Transfer of technology in the energy sector is essential. However, the technology that is transferred should be appropriate to the situation of the receiving country in terms of level of development and environmental situation. Access to technology should be affordable, and may include licensing or other procedures relating to its use. Local firms should contribute to making foreign technology suited to domestic conditions and benefit from technological spillover.

10. Renewable energies may help in addressing shortages of electricity, especially in rural areas. An assessment of their affordability, sustainability and appropriateness may be suitable before opting for this alternative.

11. Support should be given to energy services companies, especially SMEs in developing countries, including through the creation of local venture funds. Special loans should be made available to support the development of local entrepreneurship and address cash-flow shortcomings.

12. Temporary admission of specialized equipment could facilitate the provision of energy services. If this is provided by countries, they should pursue non-discriminatory treatment of local and foreign energy services suppliers in order to put them on an equal competition basis.

B. International trade negotiations

13. Experts expressed the view that multilateral and regional negotiations on energy services should be pursued in recognition of the role that energy plays in development and taking into account the development policies and objectives of developing countries.

14. Experts addressed a number of issues that are under discussion in the General Agreement on Trade in Services (GATS) negotiations in the light of the current negotiating proposals. These included proposals for clarification of the scope of energy services and improvement of current classification, including through a possible "checklist" which could be used as a tool to facilitate negotiations in the World Trade Organization (WTO) and at the regional level. However, the importance of preserving the legal certainty of the Members' commitments under the current classifications was emphasized. Also, it was stressed by some that classification should take into account the specificity of different energy markets in terms of differences in energy sources and diversity in regulatory frameworks. Moreover, a discussion was held on the suitability of developing an instrument specific to the energy services sector and comparable to the Reference Paper on Basic Telecommunications, and the possible content of such an instrument (e.g. development concerns to link in a clear manner energy services and development – including the achievement of public services goals – and promotion of competition and of foreign investment in the energy sector consistent with development goals). It was recognized that some experts had expressed different positions with respect to these issues. Also, the need to take into account in that regard the overall context of the WTO negotiations was noted.

C. Analytical work

15. In most energy-related studies the energy services component has been neglected, and the ongoing international negotiations on energy services would be greatly facilitated by analytical work in this area and by data about market reality.

16. Experts identified a number of areas for further study and analysis, with the understanding that the Commission on Trade in Goods and Services, and Commodities may select the priority areas where UNCTAD may carry out additional analytical work according to its mandate, namely:

(a) Analysis of the main structural characteristics of the energy services markets; key aspects of technological change; and the role of international and national standards and regulations on trade in energy services. These studies could contribute to the assessment of trade in services that the WTO Council for Trade in Services is carrying out at present;

(b) National experiences with structural reform of the energy sector in developing countries, and potential difficulties and opportunities for domestic energy services suppliers resulting from it; analysis of the impact of energy-related subsidies on development and trade;

(c) Compilation and analysis of a list of successful experiences of developed and developing countries in the energy sector from the investment, technology, enterprise development and other viewpoints. This could include the role of SMEs in the energy services sector, and possible disciplines to strengthen them and further their market participation;

(d) Analysis of the main issues as identified in the current GATS negotiating proposals on energy services and their possible implications for developing countries, taking into account the overall framework of WTO disciplines and the ongoing services negotiations;

(e) Analysis of issues arising from cross-border transit of energy.

D. Follow-up actions

17. Experts identified a number of areas where further action is needed. Among them, the Commission on Trade in Goods and Services, and Commodities may select the priority areas where UNCTAD may take action according to its mandate, namely:

(a) Organizing workshops and seminars on different issues, such as the role of SMEs and cooperation schemes in the energy services sector. These activities could bring together government officials, trade negotiators, representatives of the business community and other relevant stakeholders to increase their awareness about the trade and development aspects of energy services, exchange information about best practices in the sector, and identify emerging opportunities for suppliers in developing countries;

(b) Exploring the interest of the Organization of the Petroleum Exporting Countries (OPEC), the Energy Charter Secretariat and other relevant organizations in carrying out studies, in cooperation with UNCTAD, in the area of energy services with a specific focus on development and trade, and their potential for doing so;

(c) Exploring the interest of regional development banks in developing, in cooperation with UNCTAD, methodological tools for assessing the impact of investment and production in the energy services sector on economic growth, and their potential for doing so;

(d) Continuing to provide, in accordance with the UNCTAD Plan of Action agreed at UNCTAD X, technical assistance and policy advice through relevant mechanisms to producers and users of oil and gas in developing countries, in particular in the context of implementing privatization and liberalization schemes, aimed at protecting Governments as well as private users and consumers from the risks of high price volatility.

18. The experts welcomed the kind offer made by the representative of the Economic and Social Commission for Western Asia (ESCWA) to host a meeting in Beirut (Lebanon) to continue the discussions on some of the issues raised during the course of the Expert Meeting.

Chapter II

CHAIRPERSON'S SUMMARY

1. The informal discussions opened with the presentation of a paper prepared by the UNCTAD secretariat for the Expert Meeting.

Ms. Simonetta Zarrilli, Legal Officer, Trade Negotiations and Commercial Diplomacy Branch, Division on International Trade in Goods and Services, and Commodities, UNCTAD

2. Energy is central to achieving the interrelated economic, social and environmental aims of sustainable human development, and energy services play a crucial role in providing efficient access to energy in support of development. They also constitute the value added in the energy chain. Energy services include the traditional services (e.g. exploration, extraction, drilling, construction services and energy transmission) and a variety of new services (e.g. operation of power pools, energy trading and brokering, and energy management) that are emerging from the structural reform of the sector.

3. Developing countries are thus faced with the challenge of, on the one hand, achieving more reliable and efficient access to energy, and on the other hand, obtaining a greater share of the energy "business". The pursuit of both goals requires access to knowledge, expertise, technology and managerial know-how.

4. In the framework of the ongoing multilateral negotiations on services, six proposals aimed at further liberalization of the energy services sector have been tabled. A series of issues would seem to confront developing countries in those multilateral negotiations, namely classification, and possible additional provisions to be attached to the liberalization commitments.

5. Individual experts then made presentations in their own capacity on three broad themes: (a) sectoral markets for energy and energy services; (b) energy services in the General Agreement on Trade in Services (GATS) and the ongoing debate in the World Trade Organization (WTO); and (c) implications for developing countries. Presentations were followed by debates in which other experts contributed by sharing experiences and making comments.

A. Sectoral markets for energy and energy services

Mr. Norman Anderson, President and Chief Executive Officer, CG/LA Infrastructure, Washington, DC, United States

6. This presentation was divided into three parts – the technological revolution; the new industry structure; and the opportunities for developing countries – and focused mainly on electricity.

7. The availability of electricity is the precondition for most economic activities, and electricity is a key production factor with regard to economic competitiveness. A significant feature of the power sector is that venture capital investment supporting innovation exceeds similar investment in the information technology industry during its peak years.

8. The technological revolution, including digital technology, and the structural reform of the energy sector are the two elements that have made it possible both to develop new "intelligent" devices to generate and distribute electricity, and to make them available to consumers. The power sector has become very innovative and dynamic, competition is increasing and, as a result, efficiency is growing. However, the continuing capacity of the power sector to satisfy the rising demand for energy will depend on appropriate investments in research and development.

9. The next breakthrough to increase efficiency and productivity in the power sector will most likely happen in transmission. Great improvements are possible and appropriate since 40 per cent of the electricity put into the wires does not reach the end-users.

10. To be active in the sector and provide competitive services, private companies – both large firms and small and medium-sized enterprises (SMEs) – must have access to finance, knowledge and technology. Since growth in electricity demand is expected particularly in developing countries, the latter will be in a good position to satisfy demand if those preconditions are satisfied.

11. In order to increase the efficiency of the power sector, Governments should provide tax credits, make available local venture funds, remove trade barriers such as tariffs to allow new entrants into the market, and support innovation.

Professor Thomas W. Wälde, Director, Centre for Energy, Petroleum and Mineral Law and Policy, Dundee, Scotland, United Kingdom

12. Liberalization of energy services is closely linked to the liberalization of trade in energy goods. Notwithstanding the existence of a huge potential for cross-border electricity trade, in particular between developing countries, there are politically sensitive issues which represent a problem. Generally, powerful vested interests, which benefit from the existence of monopoly practices, offer strong political and economic resistance to the liberalization process.

13. A set of rules, focused on third-party access, cross-border transit and investment, is needed to ensure a more transparent and predictable regime for cross-border energy and energy services trade. The WTO Reference Paper on Basic Telecommunications Services may be taken as a model in developing a set of rules for cross-border electricity and gas trade.

14. Energy liberalization cannot be reduced to a North–South issue: it is very much a question of unlocking the synergies of the potential for energy trade between developing

countries. A transparent, predictable and depoliticized legal framework is the key to the promotion of South–South energy trade.

Mr. Christopher Melly, Program Manager, Services and Investment Division, International Trade Commission, United States

15. The three main research questions in the area of power market reform and international trade in services are: (a) What is regulatory reform? (b) How does it affect market conditions? (c) What are the implications for international trade?

16. Reform is the introduction of competition by encouraging new entrants. The main elements of reform are private participation, structural adjustments to control the market power of incumbents and open access to essential facilities.

17. Reforms affect market conditions by creating new market opportunities and expanding consumer choice. However, some impediments to free choice still remain.

18. Since reforms have encouraged international trade, the greatest trade barrier affecting the energy sector is the lack of reform. Here the GATS comes into play as a tool for encouraging international trade. There are two main shortcomings in the GATS concerning the energy sector – the classification of services in the sector, which is unclear and creates uncertainty about the coverage of specific commitments, and the effectiveness of market access. The concept of an annex or reference paper under Article XVIII should therefore be considered.

Mr. Carlos M. Añez, Cámara Petrolera y Alianza Empresarial, Venezuela

19. The potential benefits deriving from the development of oil-related services include enhanced capital formation, increased employment and exports, opportunities for the development of SMEs, and transfers of technology. There is no single market for oilfield services, but at least 35 specialized ones. The fragmented structure of the market for oilfield services must be taken into account in the WTO negotiation process. This subject is related to the crucial problem of agreeing a classification of energy services which would facilitate the scheduling of specific commitments. There are a number of important barriers to market entry faced by small domestic companies in the oilfield services sector, especially in their own domestic market. As access to international markets is crucial for domestic firms, action is needed on three fronts. First, national oil companies' purchasing practices should be modified to promote national supplier firms. Second, policy measures need to be implemented to create a fair and transparent context for competition within a legal and economic environment favourable to business. Third, specific capacity-building programmes have to be established.

Mr. Ramón Espinasa, Consultant, Inter-American Development Bank

20. The expert presented a scenario for oil trade and economic growth on the American continent over the next 15 years.

21. The Americas are the largest continent in terms of oil consumption and the second largest in terms of oil production. The United States is the third largest oil producer, and the foremost oil importer. United States oil imports are forecast to double over the next 15 years. Latin American and Caribbean (LAC) countries supply most oil imports to the United States and Canada.

22. The scenario assumes that the United States will experience an increased supply/demand gap, doubling its oil imports over the base 15-year period. In the meantime, it is expected that LAC countries will double oil production from 10 million to 20 million barrels per day. Two thirds of the increase in production in LAC countries will supply two thirds of the additional oil demand from the United States, and the LAC countries' quota in United States oil imports will reach half of the total.

23. If an increase of 10 million barrels per day is to be achieved, US$ 200 billion capital expenditure, US$ 20 billion operational expenditure and US$ 60 billion additional government expenditure will be required. Additional expenditure will be translated into overall economic growth through the multipliers of government expenditure and of the oil industry itself. The overall growth impact of these investments in LAC oil producers over the 15-year period will be of the order of 20 per cent of gross domestic product (GDP). Additional oil services are forecast to be US$ 54.4 billion, with a growth effect of 6 per cent.

Mr. Carlos Palacios Olivera, Organismo Supervisor de la Inversion en Energia (OSINERG), Peru

24. Peru is relatively well endowed with different kinds of energy sources (i.e. natural gas, hydroelectricity, liquids from natural gas, oil, coal and uranium). However, despite its endowments, it has traditionally been a net importer of hydrocarbons, which represent 60 per cent of domestic energy consumption. During the 1990s, Peru experienced a serious trade balance deficit due to increasing imports of hydrocarbons. At the same time, the existing power plants and grids proved to be completely inadequate to satisfy domestic demand.

25. To address these shortcomings, the Peruvian Government started in 1992 the implementation of a new energy policy which includes three main components: (a) disengagement of the State from commercial activities in the energy sector and opening of the sector to private operators; (b) assumption by the State of the role of regulator of commercial activities; and (c) provision of incentives to investors.

26. As a result of the implementation of the new energy policy, the Peruvian indicators of electrification and per capita consumption of energy are improving, positioning Peru in the

vanguard in Latin America. Moreover, energy firms are generating an increasing amount of fiscal revenue through the tax system.

Mr. José Eduardo Ustáriz Márquez, Viceministerio de Energía y Hidrocarburos, Bolivia

27. From 1985 onwards, under the Programme of Macroeconomic Stabilization, the Bolivian Government has been undertaking important policy reforms to restructure the energy sector. As a result of these reforms, it has transferred to the private sector oil-related upstream and downstream activities. Similarly, generation, transmission and distribution of electricity have been privatized. Therefore, since 1995 the State has assumed the functions of regulating energy operations and fixing prices, while being totally disengaged from commercial operations.

28. Bolivia is endowed with large reserves of natural gas, which are currently one of the main sources of foreign revenues. To benefit fully from these reserves, Bolivian enterprises have entered into joint ventures with foreign firms to build gas pipelines, especially the one linking Bolivia and Brazil. Moreover, Bolivia is very active in developing schemes for energy integration with other countries in the region. Other developments under way in Bolivia aim at diversifying the sources of energy and developing new value-added energy segments.

Debate

29. During the debate that followed it was noted that although the energy sector is difficult to regulate because of its strategic importance, it needs a clear legal framework to function properly. Countries which are liberalizing their energy market are at the same time re-regulating it: they are establishing new rules in areas where regulation remains appropriate.

30. It was noted that the energy sector has the potential to make a major contribution to the economic growth of all countries and to international trade. However, countries have to identify mechanisms for linking energy and development and ensuring that the energy sector contributes to their economic development. Leeway should be available for Governments to implement public policy objectives in that sector.

31. On the issue of technology, it was pointed out that foreign firms in developing countries that operate in the energy sector should transfer to the host country technology and management skill. However, it was also noted that the terms of the contracts and the commercial needs will ensure that the technology transferred is the most useful and appropriate. Technology transferred on a commercial basis is supposed to have spillover effects. Links between foreign companies and local SMEs should be strengthened in order to facilitate transfer of technology.

32. The recent power emergencies in California and Brazil were discussed. The lesson which can be drawn from these is that before creating a new framework for the energy sector,

each country has to study carefully the features of its market and the related needs. The possibility of adopting solutions existing in other countries is limited since conditions vary greatly between countries. In the Brazilian and Californian cases, however, innovative solutions are being developed to respond to the energy crisis.

33. Experts suggested a number of topics for future analytical work in the energy field and follow-up actions. These are listed in the Outcome of the Expert Meeting.

B. Energy services in the GATS and the ongoing debate in the WTO

Ms. Jasmin Tacoa-Vielma, Legal Officer, Trade in Services Division, WTO

34. There is no agreed definition of the term "services", nor is there a classification of services sectors under the GATS. During the Uruguay Round and subsequently, most WTO Members have used the WTO Secretariat's Sectoral Classification List contained in document W/120, which is non-binding and based on the United Nations Central Product Classification (CPC) and its explanatory notes, as a tool to enter their commitments under the GATS. The lack of an agreed services classification for GATS purposes has prompted some WTO Members to seek clarification in this area in the ongoing services negotiations.

35. Given the ample use of the W/120 list by Members, and the fact that commitments entered are legally binding, the WTO Committee on Specific Commitments (CSC) has been conducting an examination to assess whether there is a need to revise the list. In this context the classification of energy services has been identified as an area where further work is necessary, as the W/120 lacks a separate category for the sector. There are three main problems with the way in which the W/120 list addresses the energy sector that are frequently cited by trade negotiators: (a) only three activities are identified; (b) "other" related services are covered under various sectors in the W/120 list; and (c) possible new "energy services" may not be covered.

36. The deliberations in the CSC continue, as discussions have shown a diversity of views. One key question for WTO Members is to what extent it would be desirable and viable to attempt a multilaterally agreed definition of the energy sector, whether through a revision of the W/120 list or otherwise, for the coming negotiations on commitments.

Ms. Josée de Menezes, Trade Policy Analyst, Services Trade Policy Division, Department of Foreign Affairs and International Trade, Canada

37. The energy services sector is important for the development of all countries. In this context, a proposal was submitted by Canada in the framework of the ongoing GATS negotiations which focuses on the oil and gas services. It builds on the premise that the CPC is important for the legal stability of commitments. Discussions on classification are still ongoing, including with the purpose of distinguishing between what is a good and what is a service in the energy sector.

38. SMEs are operating in the energy sector alongside large companies. Relevant in this respect is another GATS negotiating proposal introduced by Canada in the area of SMEs. Transparency is an issue of particular importance to SMEs, since smaller companies cannot respond as quickly as large ones to regulatory changes; hence another GATS negotiating proposal tabled by Canada – on transparency – is relevant in this context.

39. Among the obstacles identified in the oil and gas sector are those facing the entry and stay of professionals. In this connection an additional proposal covering Mode 4 of services supply was tabled by Canada in the WTO as a horizontal issue. The Canadian proposal on oil and gas services is clear on two things: it does not address the issue of ownership of natural resources, but focuses on improving services suppliers' access to foreign markets; and it does not seek to create an unregulated regime.

40. Further liberalization of the energy services markets could help expand the use of environmentally friendly technologies and increase the transfer of skills. Canada's proposal makes reference to the possible use of a checklist of energy services as an aide-mémoire to help negotiators identify activities in the energy sector that could be the subject of negotiations.

Ms. Ana Novik, Counsellor, Permanent Mission of Chile, Geneva

41. In Chile the privatization of the energy sector began in the early 1980s, aimed at stimulating economic activities and allowing the presence of private actors, while the Government remained in charge mainly of the regulatory function. The Chilean energy market has become increasingly competitive. Gradual energy integration with neighbouring countries, trade in energy services and growing attention to environmental protection have become driving forces for market changes and economic growth. The growing consumption of energy has been followed by an increasing diversification of energy sources from oil and hydropower into other energy sources. The main challenges for Chile remain the introduction of renewable energies and rural electrification.

42. Chile is highly dependent on imported energy. It has an energy sector which is very open, its private firms providing energy services are looking for business opportunities in foreign markets, and the country participates in the regional forums where energy is discussed. It is within this context that a proposal on energy services was tabled by Chile in the WTO. It aims at reinforcing the development of energy services in competitive and transparent markets; embracing the whole spectrum of energy services in the negotiations; ensuring market access, while respecting domestic regulations; and analysing the issue of subsidies in the energy sector.

Mr. Francesco Meggiolaro, Administrator, Directorate-General for Trade, European Commission

43. The European Communities (EC) have engaged in the reform of the energy sector in order to achieve increased competitiveness, improved environmental protection and greater

security of energy supplies. Energy may determine – owing to its importance in the cost structure – the competitiveness of the whole industry.

44. The EC proposal to the WTO does not seek deregulation, since an appropriate legal framework is crucial for achieving national policy objectives, creating an environment of fair competition, ensuring that monopoly positions are not abused, and, ultimately, achieving efficiency through competition. It is important to analyse the variety of services activities that need to be covered in the services classification and the scope of the discussion in the WTO. The list of energy services which is included in the proposal tabled by the EC is open for discussion. It is important to maintain legal certainty, and classification should be neutral in terms of energy sources.

Ms. Rikke Eeg-Henriksen, Counsellor, Permanent Mission of Norway, Geneva

45. The energy sector remains a key factor for economic growth. The electricity market was opened up in Norway in 1991, and this led to increased competition, efficiency and better choices for consumers. Because of the special characteristics of the energy market, the Government has played an active role in setting up an appropriate legal framework. The structural reform was successful and a common market is now operational in the Nordic countries.

46. Norway is one of the few countries that have undertaken GATS-specific commitments on energy-related services. In its negotiating proposal in the context of the GATS, Norway indicated that all energy services should be covered in the negotiations; the number and scope of commitments need to be increased; regulatory issues should be addressed through a reference paper; and a checklist could be useful in negotiating specific commitments.

47. To benefit fully from the increasing competition and international trade in the energy market, it is important to have the whole chain of energy services opened up. Energy is not a sector in the established GATS classification and some energy services may be found in different sectors or subsectors of the sectoral list. For discussion purposes, Norway attached a preliminary checklist for energy-related services to its GATS proposal. The proposal acknowledges the right of Governments to regulate for the achievement of their national policy objectives, excludes the issue of ownership of resources from its scope, and recognizes that since countries are in various stages of regulatory development, commitments reflect the market and regulatory realities.

48. A number of regulatory issues have to be addressed during the negotiations and a reference paper could be negotiated to set up disciplines on specific issues, such as transparency, non-discriminatory access to the network and anti-competitive practices.

Ms. Lana Ekimoff, Senior Economist, Office of International Policy, Trade and Investment, Department of Energy, United States

49. There is no separate classification of energy services in the GATS. In defining what energy services are, it is important to include the whole chain of energy-services-related activities intended to provide efficiently produced, reasonably priced and reliable energy to consumers. Five categories were identified in this respect: (a) activities related to the exploration and development of energy resources; (b) activities related to the operation of an energy facility; (c) activities related to energy networks; (d) services related to wholesale markets in energy; and (e) services related to the retail supply of energy. A clearer inclusion of energy services under the GATS could benefit the providers of these services by offering greater legal certainty about the situation in foreign markets, as well as government officials, who would have a solid basis for making meaningful market access commitments in this sector. All countries would benefit from the adoption of a proper classification of energy services.

50. A proposal on energy services was submitted by the United States in December 2000. It recognizes the importance of environmental protection and of competition to ensure that consumers have access to efficiently produced, reasonably priced and reliable energy. It also recognizes the role of Governments in regulating resources with the aim of protecting the environment and achieving sustainable development. Furthermore, it stresses that barriers in many countries may limit market access and national treatment and give rise to discriminatory access, and that ownership of resources is not part of negotiations, as well as putting forward the idea of a reference paper that would outline access issues.

Ms. Elbey Borrero, Second Secretary, Permanent Mission of Venezuela, Geneva

51. The Venezuelan GATS proposal assumes that improved market access in the energy services sector will have beneficial effects for all countries, that negotiations on the liberalization of that sector should not address the issue of ownership of natural resources, and that the energy sector will continue to be regulated to ensure the achievement of public policy goals. The proposal is aimed at creating the necessary environment to strengthen domestic entrepreneurial capacity, especially the participation of SMEs in order to avoid market concentration. Joint venturing is seen as one way of promoting the participation of domestic companies. The proposal puts emphasis on access to technology on a commercial basis. Through increasing domestic supply capacity and greater participation by local firms in the energy services market, developing countries will improve their competitiveness in all sectors since energy services are infrastructure services.

52. The expert highlighted the development rights enshrined in the GATS. She emphasized the positive list approach, the right of Governments to regulate and to attach conditions when giving access to their markets, and the flexibility granted to developing countries in line with the provisions of GATS Article XIX.

53. With respect to the classification of energy services, the Venezuelan proposal suggests that the classification of the energy services sector take account of three criteria: the sources of energy; the phases of the energy process; and the distinction between "core" and "non-core" services. A checklist may benefit negotiators and be helpful in respect of legal certainty in the making of specific commitments.

Debate

54. A lively debate followed the presentation of negotiating proposals. The experts agreed that the energy sector is a strategic sector and this is why it was left for a long time in the hands of Governments. It continues to be a crucial sector and countries maintain their interest in it. The experts felt that all stakeholders should be involved in the current debate on energy services. The developing country contribution to world trade in energy is currently 20 per cent. Promoting international trade will give developing countries the opportunity to increase their participation. However, while international trade is important, there is a need to link it with development. Privatization may be an option for doing so, one which several developing countries are now considering. Although more affordable prices have made it possible for a larger number of people to have access to energy, many segments of the population and business in developing countries still cannot afford it. The critical element, therefore, is access to financial resources.

55. It was noted that the energy market is a segmented market containing many different types of different services. It seems to include a small number of large firms, which are especially active in oilfield services, and a myriad of SMEs, which are increasingly active in specific segments of the market. Companies which operate in the sector have to be versatile enough to provide different kinds of services, able to respond quickly to requests for services, and able to provide services in different places. The market concentration and vertical integration that the sector is experiencing are the result of these requirements, which very few firms are able to meet.

56. Issues related to SMEs were regarded by most participants as very relevant. The experts believed that the challenge is to find mechanisms which would allow companies of various sizes to play a role in the energy market and contribute to economic growth.

57. Several experts stressed the close link between market liberalization in the energy services sector, investment and transfer of technology, and underlined the need to take the development aspect into account when negotiating the opening of this strategic sector.

58. According to one expert, by and large, all the negotiating proposals on energy services suggest a "cluster" approach. He wondered about the implications of using this approach in the energy services sector as compared with other services sectors. According to several experts, a checklist could be a useful and flexible negotiating tool to identify energy-related activities that could be the subject of negotiations.

59. It was noted that an appropriate classification of energy services is not an end in itself, but a tool to facilitate the scheduling of commitments. A consensus has not yet been reached on whether it would be appropriate to modify the classification list as included in WTO document W/120 and create a specific category for energy services. However, it is clear that any possible modification of W/120 should be negotiated by WTO Members, bearing in mind the need for the legal security of existing commitments.

60. UNCTAD should play a key role in collecting energy statistics and make them available. Statistics are of paramount importance for attracting investment and for fostering the liberalization of trade in energy services.

61. Several experts stressed that countries' different levels of development, market realities and regulatory situations should be taken into account during negotiations. It was noted that some of the GATS proposals refer to the concept of technological neutrality: it may be useful to clarify and define this.

62. Another issue that retained the attention of most experts was the possible need to negotiate a reference paper for energy services, similar to the WTO Reference Paper on Basic Telecommunications Services. If such a paper proved to be needed, the question of its content would arise. The experts mentioned as the most likely content rules on competition and on conditionalities to link the opening of the sector with development.

63. Finally, it was noted that UNCTAD's Expert Meeting on Energy Services was the first intergovernmental gathering to address issues related to the energy services sector. However, other intergovernmental organizations have been working on related issues. More specifically, the Economic and Social Commission for Western Asia (ESCWA) has prepared three studies on trade aspects of energy. The representative of ESCWA expressed his organization's interest in hosting a follow-up meeting.

C. Implications for developing countries

Mr. Bernardo Alvarez, Vice-Minister of Energy and Mines, Venezuela

64. The Venezuelan development strategy in the energy sector is based on four dimensions: fiscal revenue, the supply chain of goods and services, downstream industrialization and private domestic capital participation. A balance among the four dimensions has to be ensured. The key goal of the strategy is to develop a network of public and private enterprises able to produce tradable goods and services and compete in international markets. To this end, national and foreign private investment and joint ventures will be promoted. The development of the energy sector will favour the enhancement of other economic sectors and of society as a whole, and contribute to the overall diversification of the Venezuelan economy.

65. In Venezuela oil and gas are the main exports (worth US$ 27 billion in 2000) and the main source of fiscal revenue (totalling US$ 12 billion in 2000), but the growth potential of

the fiscal dimension is limited and its behaviour volatile. Economic diversification must be pursued, taking into consideration the competitive advantage of the energy sector.

66. Downstream industrialization is the dimension with the highest growth potential, because of its linkages with the rest of the economy, and represents the main challenge for the development of the energy value chain.

67. With regard to the supply chain of goods and services, the energy sector will generate in the long run a great demand for goods and services, enabling the establishment of new services suppliers and the consolidation of existing ones.

68. The Venezuelan development strategy also focuses on fostering private domestic capital investment, promoting strategic alliances between national and international enterprises and strengthening internal savings and domestic capital markets.

69. Energy must be used as a tool to tap the huge opportunities for developing a strong and diversified national services industry in the energy sector. For that purpose, alliances have to be promoted between domestic and foreign enterprises of all sizes for the supply of services nationally and internationally; a network of national and international companies supplying core and related energy services should be established; and the energy strategy must be supported by Venezuela's active participation in the multilateral trade negotiation forums.

Mr. B.S.K. Naidu, Director General, National Power Training Institute, Ministry of Power, India

70. Energy must be available, accessible and affordable. Currently, new renewables represent only 2 per cent of global energy consumption, while fossil fuels represent 85 per cent. Nearly two billion people in developing countries lack access to modern commercial energy forms. Since most energy is obtained from the burning of exhaustible and polluting fossil fuels, carbon dioxide levels and temperatures have increased and millions of people risk losing their land because of rising sea levels. A choice in favour of renewable, sustainable and environmentally friendly energy sources can be made only when the people at large have this option.

71. In energy-starved India, one billion people cannot afford any form of commercial energy. Seventy per cent of the population, living in rural areas, have poor-quality and unreliable energy supplies. Although 85 per cent of villages are electrified, only 31 per cent of rural households have access to electricity. Four hundred million people lack access to electricity and are therefore forced to use traditional, inefficient and polluting energy sources, thus jeopardizing their health and depleting natural resources. Energy policies in India, as in other developing countries, should always give priority to the survival and welfare of the rural poor and stimulate their participation and creativity. Humanitarian concerns should prevail over business considerations, and local specific re-engineering is to be preferred to

blind technology transfer. Energy strategies should be based on a thorough knowledge of national conditions and needs, and must encourage local capacity-building.

Mr. Léonidas Ndayishimiye, Director-General, Directorate-General of Water and Energy, Ministry of Energy and Mines, Burundi

72. The people of Burundi, Rwanda and the eastern region of the Democratic Republic of the Congo depend on traditional sources of energy. These countries import most of the electricity they consume, but are conducting feasibility studies regarding the possibility of building more hydroelectric plants. Some studies have considered including other countries of the subregion in this effort, namely Uganda and the United Republic of Tanzania.

73. However, there are still considerable barriers to regional trade in energy goods and services, namely lack of financial resources to build an efficient infrastructure for energy generation, political instability and differing tariff systems among the three countries. The process of liberalization of the energy sector has been slow so far and regulatory regimes are still based on traditional public monopolies.

74. Regional integration would be an efficient means to attract financial resources and increase economic growth. However, before debating trade in energy goods and services, experts and Governments should focus on the difficulties that several developing countries face in energy generation.

Mr. Issa Alao Yaya-Oye, Counsellor, Ministry of Energy, Benin

75. The expert from Benin stressed the need for the African countries in the region to increase the production of energy and widen its distribution among the population. In this connection, Benin started ten years ago the liberalization of the energy sector with the objective of producing energy more efficiently and at a lower cost. The production and distribution segments have been privatized. Regional integration is being considered as a means of increasing efficiency and Benin is importing natural gas from Nigeria.

76. The issue of sustainable development should be addressed, since increased burning of firewood by the rural population, which lacks access to modern commercial energy, leads to environmental problems. The main concern for Benin is to obtain enough financial resources to ensure better access to energy for the local population. Electrification of the villages in Benin would cost around US$ 100,000.

Mr. Kirimi Guantai, Head of Planning, Ministry of Energy, Kenya

77. Petroleum products account for 70 per cent of commercial energy in Kenya and petroleum exploration is yet to yield commercially exploitable sites. Hydropower is the main generator of electricity. Kenya has experienced critical power shortages since September 1999, mainly owing to a lack of rain. Since electricity reaches only 1.5 per cent of the rural population, solar energy is becoming an attractive option. The Government recently reduced

duties on solar energy systems to make them more affordable. Studies are being conducted to improve quality control.

78. Kenya is a net importer of petroleum and spends about 4 per cent of GDP per year on importing petroleum products. The petroleum sector was deregulated in 1994 in order to allow more players to enter the market. The Kenyan petroleum market, however, is far from being competitive. This is due to a lack of adequate infrastructure, the need for a large amount of capital to start a business, and the absence of an adequate regulatory framework.

79. There has been cooperation in the energy sector in East Africa for many years. However, it needs to be enhanced, strengthened and diversified. Barriers include the absence of an energy master plan for the region, poor infrastructure, unreliable information, inadequate research and different economic policies. Some recommendations for enhancing energy trade in the region include the harmonization of standards for gasoline, the development of a new strategy for cross-border electrification, the exchange of data and information between power utilities, an inventory of renewable energy technologies and the development of standards and codes of practice for those technologies, as well as tax relief for manufacturers and retailers of renewable-energy-related technologies.

Mr. K.B. Wakhley, Head of Division, Programme Implementation Division, Department of Power, Ministry of Trade and Industry, Bhutan

80. Availability of energy used to be a particular problem in Bhutan, especially in the rural areas. However, there are now 23 hydropower stations with various capacities operating in the country. The most important aspect of hydropower development activities has been the accrual of revenues from the sale of electricity locally as well as to India. Forty-five per cent of government revenue is generated by the sale of electricity, and this contributes 11 per cent to GDP. The availability of electricity to people, especially in rural areas, has had remarkable effects. There have been tremendous improvements in health, hygiene and productivity. International trade in energy involves political will and therefore political cooperation among countries should be fostered.

Debate

81. A lively debate followed the main presentations. Some experts from developing oil-producing and exporting countries expressed their concerns about the structural changes taking place in the energy sector. Energy companies are becoming increasingly vertically integrated and a number of national and regional companies worldwide are becoming transnational companies. These phenomena could lead to a concentration of expertise and technology in the hands of a few large firms. It would therefore become increasingly difficult for developing country firms to compete with such companies and participate more meaningfully in the energy markets. Experts noted that their Governments sometimes have problems in dealing with transnational companies that are extremely powerful and influential.

82. The experts from oil-producing and exporting developing countries noted that multilateral trade negotiations on energy goods and services are of the greatest relevance and sensitivity for them. This is because their economies wholly depend on oil, and any change in the trade flows of energy goods and services would impact on their development prospects. For this reason, oil-producing and exporting developing countries should develop a common negotiating position on energy-related issues.

83. Some experts expressed their concern at the high level of consumption and excise taxes imposed on petroleum products in the consuming countries and called for lower taxes.

84. On the issue of structural reform in the energy sector, it was asserted that each country should retain the freedom to reform the sector when it deems it appropriate, in accordance with its sustainable development strategy. Developing countries need assistance in this process since there are many different ways of liberalizing the energy sector. A road map could be drawn to serve as a guideline for enhancing trade in energy services and to facilitate trade negotiations.

85. Reacting to the presentations made by representatives of least developed countries, experts pointed out that South–South cooperation in the energy field has great potential for contributing to the solution of energy-related problems and should therefore be pursued.

Chapter III

ORGANIZATIONAL MATTERS

A. Convening of the Expert Meeting

86. The Expert Meeting on Energy Services in International Trade: Development Implications was held at the Palais des Nations, Geneva, from 23 to 25 July 2001.

B. Election of officers

(Agenda item 1)

87. At its opening meeting, the Expert Meeting elected the following officers to serve on its bureau:

Chairperson:	Mr. Werner Corrales (Venezuela)
Vice-Chairperson	Ms. Marja Kuosmanen (Finland)
Vice-Chairperson-cum-Rapporteur:	Mr. Youri Afanassiev (Russian Federation)

C. Adoption of the agenda and organization of work

(Agenda item 2)

88. At the same meeting, the Expert Meeting adopted the provisional agenda circulated in document TD/B/COM.1/EM.16/1. The agenda for the Meeting was thus as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. Energy services in international trade: Development implications
4. Adoption of the outcome of the Meeting

D. Documentation

89. For its consideration of the substantive agenda item, the Expert Meeting had before it a note by the UNCTAD secretariat entitled "Energy services in international trade: Development implications (TD/B/COM.1/EM.16/2).

E. Adoption of the outcome of the Meeting

(Agenda item 4)

90. At its closing meeting, the Expert Meeting authorized the Rapporteur to prepare the final report of the Meeting, under the authority of the Chairperson.

Annex

ATTENDANCE *

1. Experts from the following States members of UNCTAD attended the Meeting:

Angola
Austria
Benin
Bhutan
Bolivia
Brazil
Burundi
Canada
Chile
Colombia
Costa Rica
Cuba
Dominican Republic
Egypt
Ethiopia
Finland
France
Guinea
Holy See
India
Indonesia
Iran (Islamic Republic of)
Italy
Kenya
Kuwait
Lesotho
Libyan Arab Jamahiriya
Lithuania
Madagascar
Mexico
Morocco
Netherlands
Oman
Paraguay
Peru
Qatar
Russian Federation
Sao Tome and Principe
Saudi Arabia
Slovakia
Switzerland
Thailand
Trinidad and Tobago
Turkey
United Arab Emirates
United Kingdom of Great Britain and Northern Ireland
United States of America
Uruguay
Venezuela
Viet Nam

2. The following intergovernmental organizations were represented at the Meeting:

Inter-American Development Bank
Asian-African Legal Consultative Committee
European Community
Organisation for Economic Co-operation and Development
Organization of African Unity

* For the list of participants, see TD/B/COM.1/EM.16/INF.1.

3. The following specialized agencies and related organization were represented at the Meeting:

Food and Agriculture Organization of the United Nations
United Nations Industrial Development Organization
World Trade Organization

4. The Economic Commission for Europe, the Economic and Social Commission for Western Asia and the Department of Economic and Social Affairs were represented at the Meeting.

5. The following non-governmental organization was represented at the Meeting:

General Category

Exchange and Cooperation Centre for Latin America

6. The following special invitees attended the Meeting:

Ms. Elisabeth Tuerk, Center for International Environmental Law (CIEL)
Mr. Andras Lakatos, Senior Expert Trade, Energy Charter Secretariat
Ms. Anne-Malorie Géron, Adviser – Legal Affairs, EURELECTRIC
Mr. Thomas Spiller, Manager, Institutional Affairs, FORATOM (European Atomic Forum)
Mr. Ismail Elshafei, Senior Researcher, Projects Department, Gulf Organization for Industrial Consulting (GOIC)
Mr. Julian Arkell
Mr. Kamil Mahdi, Senior Lecturer, Institute for Arab and Islamic Studies, University of Exeter
Mr. Maxim Bannikov, Lawyer, Brussels, Belgium
Mr. Vagit Alekperov, President, Lukoil
Mr. Claude Haegi, President, Foundation for the Economy and Sustainable Development of the Regions of Europe

Speakers

Professor Thomas Wälde, Director, Centre for Energy, Petroleum and Mineral Law and Policy, Dundee, Scotland, United Kingdom
Mr. Norman Anderson, President and Chief Executive Officer, CG/LA Infrastructure, Washington, DC, United States